General Assembly

Human Rights Council
Seventeenth session
Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by People's Solidarity for Participatory Democracy, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 May 2011]

---

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Please recycle

The situation of voters' freedom of opinion and expression in the Republic of Korea

1.   The report of Frank La Rue, the special rapporteur on the promotion and protection of the right to freedom of opinion and expression, on his mission to the Republic of Korea from 6 to 17 May 2010, is officially submitted to the seventeenth session of UN Human Rights Council. In the report, recommendations on eight issues were made including defamation, freedom of opinion and expression on the Internet, freedom of assembly, independence of the media, freedom of opinion and expression before elections.

2.   PSPD (Co-Representative Jong-Dae Lim, Hyun-Back Chung and Ven. Chunghwa, Suok-Tae Lee,) expresses deep concerns on which the freedom of opinion and expression in Korea has regressed for the last several years as pointed out in the report. As the holder of a special consultative status of ECOSOC of UN, PSPD presents this written statement to direct attention to the voters' freedom of speech in Korea and suggest directions for improvement at this important juncture facing the impending General and Presidential Election in 2012.

Voters' freedom of opinion and expression

3.   The constitution of the Republic of Korea guarantees voters the right to participate in governance and the freedom of opinion and expression. Article 25 of the UN Covenant on civil and political rights approves the freedom of opinion and expression. Therefore, Korean government is obligated to comply with its constitution and international convention, and protect the people's right to freedom of opinion and expression.

4.   However, exercising political rights in relation to elections is in controversy again at a time facing the General Election and the Presidential election in 2012. A civilian was arrested before the by-election in April 2011 on the charge of distributing fliers disapproving government's policies even when no reference to a political party or a candidate was made. The police requested a shop owner to submit written explanations for giving a discount to the customers who will vote that day. Under the current laws, any debate, exchange of information, or expression of support or opposition to a candidate with respect to the elections in 2012 is banned from October 2011 which falls within the 180 days period prior to the election. In order to protect voters' right to freedom of opinion and expression in every election, the Public Officials Election Act must be amended.

5.   The Republic of Korea is a member of the Human Rights Council and a party to UN covenant on civil and political rights. Each party is obligated to respect and protect rights stipulated in the covenant. Hence, Korean government is urged to adopt necessary measures to improve people's freedom of expression. PSPD also requests UN Human Rights Council to pay a special attention on this matter at the seventeenth session.

Current situation of voters' freedom of opinion and expression in Korea

6.   The Election Act contains excessive restrictions on the method and period of election campaign that seriously infringes people's freedom to express political views. Moreover, provisions are too vague or abstract that voters cannot determine which conduct violates the election laws and open up grounds for arbitral interpretation by the National Election Commission, prosecutors, and courts.

7.   Although Korea ranks the highest in use of the Internet and even the Constitutional Court recognizes the Internet as "the most participatory market and the most expression-encouraging medium", as Frank La Rue mentioned, in reality, the freedom of expression of voters are not protected even on the Internet. Under the Election Act, voters cannot support or criticize any candidate or party in light of their political beliefs, assemble, sign petitions, and speak for or promote the policies that they desire, or even encourage others to vote in favor of specific policies.

8.   These activities are all violations of the current election laws and punishable under the provisions banning pre-election campaigns and supporting or opposing candidates in writing. In 2007, a university student was charged and fined with 800 thousand Korean won for making and posting a User Created Content, comprised of a collage of news articles and titled "Are we fine with the candidate Lee Myung Bak?" Parodies on lawmakers are also subject to punishment. Just before 2004 General Election, one of parodists Shin and a university student Kwon were fined for making parodies using movie posters and newspaper cartoons about lawmakers who approved former president Roh Moo Hyun's impeachment. Furthermore, rights were not protected even in online political discussion rooms. Furthermore, posting views in support of or in opposition to a candidate in an internet bulletin board are all regarded as an act designed to influence elections and therefore punishable.

9.   Furthermore, a legally permitted campaign period is limited to 13 days for congressional elections and 22 days for presidential elections that people do not have appropriate amount of time to express and communicate their views on candidates and political parties.

10.   Even non-campaign activities can be banned for the excessively long period of time. Representative provisions are Article 90 (prohibition of installation), Article 93 (prohibition of unlawful posting and distributing documents, drawings and 'or the like'), Article 103 (prohibition of assembly), Article 107 (prohibition of signature and/or seal-collecting campaigns), Article 251 (defamation of candidates) and Article 254 (Violation of election campaign period). Prohibition period of election related activities are defined "from 180 days prior to until the Election Day" which is unreasonable long. The definition of "with intention to influence elections" is so ambiguous that it is vulnerable to arbitrary interpretation. Consequently, it makes voters censor their own views and hesitate in showing and sharing political opinions.

The solution is to reform the election act

11.   Elections in democratic nations provide a venue where people can exercise their sovereign powers. While various participations based on SNS are increasingly influencing and changing election culture, the Korean Election Act is failing to reflect the current trend and still retains outdated restrictions. It does not encourage people to participate in politics. The more active participation, the higher the chance to violate laws. In order to enjoy political rights and the freedom of expression, the restriction-centered election laws have to be changed. Only when information on candidates is freely exchanged, views and suggestions are brought up without hindrances, and discussions are not restricted, people can vote for the right person.

12.   The enforcement authorities such as the National Election Commission, prosecutors and the police should stop interpreting laws arbitrarily and exercising unjustifiable control. We must stand guard against the chilling effects arising from such enforcement actions, the biggest evil against freedom of speech.

Recommendation

13.   PSPD requests UN Human Rights Council's attention on the situation of voters' freedom of opinion and expression in ROK. PSPD also recommends that Human Rights Council would demand the government of the Republic of Korea to implement the recommendations of Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

————————